



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
2006 – 2007 ALTERNATIVE WATER SUPPLY
FUNDING PROGRAM**

Recipient: Recipient's Project Manager: Address: Telephone No: Fax No:	Agreement Number: Governing Board Approval Date: District Funding Amount: \$ _____ Contract Term: October 1, 2006 - September 30, 2007
SFWMD Project Manager: Telephone No.: Fax No.: Contract Specialist: Bernadette Harrison Telephone No.: (561) 682-6378 Fax No.: (561) 682-5587 Address: P.O. Box 24680 3301 Gun Club Road West Palm Beach, FL 33416-4680	
Insurance: Not Applicable	
Federal Employer Identification Number:	
Project Title: Description:	

This **Agreement** is entered into between “the Parties,” the South Florida Water Management District, the “**District**”, and the undersigned party, hereinafter referred to as the “**Recipient**.” The **Recipient** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **Agreement**, and shall abide by all legal, financial and reporting requirements, such as matching funds and final reports for all funding received by the **Recipient** from the **District**.

ARTICLE 1 – PROJECT

- 1.1 The **Recipient** shall, to the satisfaction of the **District**, fully and timely construct and perform all work items described in the “Statement of Work,” attached hereto as Exhibit “A”, hereinafter referred to as the “Project”, and made a part of this **Agreement**.
- 1.2 As part of the deliverables to be provided by the **Recipient** under this **Agreement**, the **Recipient** shall substantiate, in whatever form reasonably requested by the **District**, any supporting documentation utilized as a basis for payment by the **District**. This paragraph shall survive the expiration or termination of this **Agreement**.
- 1.3 Attached to this **Agreement** are the following exhibits which are incorporated herein:

Exhibit A	Statement of Work
Exhibit B	Schedule of Deliverables
Exhibit C	Reporting Form

ARTICLE 2 – TERM OF THE AGREEMENT

- 2.1 The period of performance of this **Agreement** will be the dates noted on the first page of this **Agreement**.
- 2.2 The Parties agree that time is of the essence in the performance of each and every obligation under this **Agreement**.

ARTICLE 3 – COMPENSATION / CONSIDERATION

- 3.1 As consideration for the Project required by this **Agreement**, the **District** shall pay the **Recipient** the funding amount as specified on page one of this **Agreement**. Such amount is not to exceed the specified amount and therefore, no additional consideration shall be authorized. The **Recipient** shall provide at least sixty percent (60%) of the Project’s construction cost, unless a different amount is authorized pursuant to s. 373.1961(3)(e), Florida Statutes.
- 3.2 The **Recipient** assumes sole responsibility for all work which is performed pursuant to Exhibit “A”. By providing funding hereunder, the **District** does not make any warranty, guaranty or any representation whatsoever regarding any of the work performed hereunder, including but not limited to, the adequacy or sufficiency of all or any part of work described in Exhibit “A”.

- 3.3 The **Recipient** hereby agrees not to use **District** funding for any work associated with the research, design and permitting aspects of the project. **District** funds shall only be used for the construction activities described in Exhibit “A”.

ARTICLE 4 – FUNDING PAYMENTS AND REPORTING

- 4.1 The **District** shall make payment to the **Recipient** upon completion and acceptance of the final deliverable(s) as described in the “Schedule of Deliverables”, attached hereto as Exhibit “B”. On or before August 1, 2007, the **Recipient** shall provide a completed Reporting Form, attached hereto as Exhibit “C”. Concurrent with delivery of the final deliverable, the **Recipient** shall provide certification that all construction has been completed in accordance with Exhibit “A” of this **Agreement**.
- 4.2 The **Recipient's** invoice shall reference the District's Agreement Number and shall be sent to the Contract Specialist at the address stated on the first page of this **Agreement**. The **Recipient** shall not submit an invoice to any other address at the **District**.
- 4.3. Upon completion of the project, any data that was generated during the performance of the project shall be submitted to the **District** upon request.

New Well Construction Projects: For projects involving construction of new wells, the **Recipient** shall:

1. Submit design of well construction and testing programs to the **District** for review and comment prior to implementation. The **Recipient** shall integrate the **District's** comments into the final testing plan where feasible.
2. Submit all pertinent well information collected during well construction and testing (i.e., depths, cuttings descriptions, geophysical logs, aquifer test data, etc.), as available. Submissions shall be provided electronically as specified by the **District**.

The data will be archived in the **District's** permanent database and available to the public. Please contact Anthony Larenas at (561) 682-2643, alarenas@sfwmd.gov or Emily Richardson (561) 682-6824, for instructions on submitting data.

- 4.4 The **Recipient** shall provide to the **District** regular project update/status reports by December 1, 2006; February 1, 2007; April 1, 2007 and June 1, 2007. Reports will provide detail on progress of the project and outline any potential issues affecting project completion or overall schedule. Status reports may be submitted in any form agreed to by **District** project manager and the **Recipient**, and may include emails, memos, and letters.
- 4.5 In accordance with Section 373.0361 (7) (b) of the Florida Statutes, the **Recipient** shall provide an annual status update to the **District** detailing the progress of the project.

ARTICLE 5 – CONTRACT MANAGEMENT

- 5.1 The Parties shall direct all matters arising in connection with the performance of this **Agreement** to the attention of the Project Manager for attempted resolution or action. The Project Manager shall be responsible for overall coordination and oversight relating to the performance of this **Agreement**.
- 5.2 All notices, demands or other communications regarding this **Agreement**, other than those set forth in paragraph 4.2 above, shall be in writing and forwarded to the attention of both the Project Manager and the Contract Specialist noted on the first page of this **Agreement** by certified mail, return receipt requested.
- 5.3 Should either Party change its address, written notice of such new address shall promptly be sent to the other Party.
- 5.4 All correspondence to the **District** under this **Agreement** shall reference the **District's** Agreement Number.

ARTICLE 6 – TERMINATION / REMEDIES

- 6.1 It is the policy of the **District** to encourage good business practices by requiring recipients to materially perform in accordance with the terms and conditions of the **Agreement**. In accordance with Chapter 40E-7, Part II of the Florida Administrative Code, “Material Breach” is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the **Agreement**.

If the **Recipient** materially fails to fulfill its obligations under this **Agreement**, the **District** will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The **Recipient** shall have thirty (30) days to cure the breach. If the **Recipient** fails to cure the breach within the thirty (30) day period, the **District** shall issue a Termination for Default Notice. Once the **District** has notified the **Recipient** that it has materially breached its contract with the **District**, by sending a Termination for Default Notice, the District’s Governing Board shall determine whether the **Recipient** should be suspended from doing future work with the **District**, and if so, for what period of time. The District’s Governing Board will consider the factors detailed in Chapter 40E-7, Part II of the Florida Administrative Code in making a determination as to whether a **Recipient** should be suspended, and if so, for what period of time. Should the **District** terminate for default in accordance with this provision, the **District** shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity.

- 6.2 The **District** may terminate this **Agreement** at any time for convenience upon thirty (30) calendar days prior written notice to the **Recipient**. The performance of work under this **Agreement** may be terminated by the **District** in accordance with this clause in whole, or from time to time in part, whenever the **District** shall determine that such termination is in

the best interest of the **District**. Any such termination shall be effected by delivery of a Notice of Termination to the **Recipient**, specifying the extent to which performance of work under the **Agreement** is terminated, and the date upon which such termination becomes effective. In the event of termination, the **District** shall compensate the **Recipient** for all authorized and accepted work performed through the termination date. The **District** shall be relieved of any and all future obligations hereunder, including but not limited to, lost profits and consequential damages under this **Agreement**. The **District** may withhold all payments to the **Recipient** for such work until such time as the **District** determines the exact amount due to the **Recipient**.

- 6.3 In the event a dispute arises, which the Project Managers cannot resolve between themselves, the Parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.
- 6.4 Notwithstanding anything in this **Agreement** to the contrary, the **District** reserves the right to terminate this **Agreement** immediately without notice in the event any of the representations contained in the Project Proposal are found to be false or if the **Recipient** fails to complete the construction and performance of all work items described in Exhibit A, Statement of Work.

ARTICLE 7 – RECORDS RETENTION

- 7.1 The **Recipient** shall maintain records and the **District** shall have inspection and audit rights as follows:
- (a) Maintenance of Records. The **Recipient** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **Agreement**, including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this **Agreement**.
 - (b) Examination of Records. The **District** or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **Agreement**. Such examination may be made only within five (5) years from the date of final payment under this **Agreement** and upon reasonable notice, time and place.
 - (c) Extended Availability of Records for Legal Disputes. In the event the **District** should become involved in a legal dispute with a third party arising from performance under this **Agreement**, the **Recipient** shall extend the period of maintenance for all records relating to this **Agreement** until the final disposition of the legal dispute, and all such records shall be made readily available to the **District**.
 - (d) Periodic Audits. The **District** shall perform audits periodically to ensure funding objectives are being met.

ARTICLE 8 – STANDARDS OF COMPLIANCE

- 8.1 The **Recipient**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **Agreement**. The **District** undertakes no duty to ensure such compliance, but will attempt to advise the **Recipient**, upon request, as to any such laws of which it has present knowledge.
- 8.2 The laws of the State of Florida shall govern all aspects of this **Agreement**. In the event it is necessary for either party to initiate legal action regarding this **Agreement**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims, which are justifiable in federal court.
- 8.3 The **Recipient** shall allow public access to all Project documents and materials in accordance with the provisions of Chapter 119 of the Florida Statutes. Should the **Recipient** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **Recipient**.
- 8.4 Pursuant to Section 216.347 of the Florida Statutes, the **Recipient** is prohibited from the expenditure of any funds under this **Agreement** to lobby the Legislature, the judicial branch or another state agency.
- 8.5 The **Recipient** has obtained, at its sole expense, all necessary licenses, authorizations and permits from the appropriate private party or federal, state, municipal or local agency, and other governmental approvals, prior to commencing performance of this **Agreement**. The **Recipient** agrees to comply with the terms and conditions of all permits.
- 8.6 The **Recipient** hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or is otherwise subjected to discrimination in any activity under this **Agreement**. The **Recipient** shall take all measures necessary to effectuate these assurances.
- 8.7 Pursuant to Section 287.133 of the Florida Statutes, a person or affiliate who has been placed on the convicted vendor list may not submit a bid, proposal, or reply to a request to provide any goods or services related to the construction of the Project contemplated herein. **Recipient** also assures that it is not on the District's Suspension of Contractors List. **Recipient** agrees to include a provision to this effect in all requests for proposals and subcontracts related to construction of this project.
- 8.8 A **Recipient** who operates a public water supply utility shall, by June 1, 2007 adopt a rate structure that will promote the conservation of water and promote the use of water from alternative water supplies and shall provide the **District** with a copy of such adopted rate structure on or before August 1, 2007.
- 8.9 **Recipient** of funds for a reuse project shall provide a status report by August 1, 2007 addressing the following issues: (1) accounting of reclaimed water usage and method used

(meters, etc.); (2) all rates and charges for reclaimed water; (3) the status of implementing public education programs to inform the public about water issues, water conservation and the importance and proper use of reclaimed water; and (4) providing the **District** with the location of each reuse facility owned by the **Recipient**.

8.10 This paragraph shall remain in full force and effect for twenty (20) years from the date of contract execution. After construction is completed on the project, the **Recipient** shall continuously operate the project as described in the project proposal and consistent with the applicable water use permit(s). In the event the project is not operated in accordance with these requirements, the **District** may cease funding for this project and any future projects proposed by the Recipient. All other provisions of this contract shall terminate on September 30, 2007.

8.11 **Recipient** shall implement a public education program to inform the public about the environmental and other public benefits of the Alternative Water Supply project and shall provide the **District** with a copy of such public education program on or before August 1, 2007.

ARTICLE 9 – INDEMNIFICATION AND INSURANCE

9.1 For value received, which is hereby acknowledged, the **Recipient** shall defend, indemnify, save, and hold the **District**, its officers, directors, board members, agents, assigns, and employees harmless from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the **Recipient** and other persons employed or utilized by the **Recipient** in the performance of the **Agreement**. The **District** shall have the right to approve counsel selected by the **Recipient** to defend the **District** in the event the **District** is named in any legal action.

The **Recipient** further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this **Agreement**. This paragraph shall survive the expiration or termination of this **Agreement**.

ARTICLE 10 – RELATIONSHIP BETWEEN THE PARTIES

10.1 The **Recipient** shall be considered an independent contractor and neither party shall be considered an employee or agent of the other party. Nothing in this **Agreement** shall be interpreted to establish any relationship other than that of an independent contractor between the parties and their respective employees, agents, subcontractors, or assigns during or after the performance of this **Agreement**. Both parties are free to enter into contracts with other parties for similar services.

10.2 The **Recipient** shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this **Agreement** without the prior written consent of the **District**. Any attempted assignment in violation of this provision shall be null and void.

- 10.3 It is the intent and understanding of the Parties that this **Agreement** is solely for the benefit of the **Recipient** and the **District**. No person or entity other than the **Recipient** or the **District** shall have any rights or privileges under this **Agreement** in any capacity whatsoever, either as third party beneficiary or otherwise.

ARTICLE 11 – GENERAL PROVISIONS

- 11.1 Notwithstanding any provisions of this **Agreement** to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this **Agreement** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God or for any other cause of the same character, which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this **Agreement** shall otherwise remain in effect. This provision shall not apply if the Statement of Work, Exhibit “A” of this **Agreement** specifies that performance by the **Recipient** is specifically required during the occurrence of any of the events herein mentioned.
- 11.2 Any inconsistency in this **Agreement** shall be resolved by giving precedence in the following order:
- (a) Terms and Conditions outlined in Articles 1-11
 - (b) Exhibit “A” Statement of Work
 - (c) All other exhibits, attachments and documents specifically incorporated herein by reference
- 11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **Agreement** by the Parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other Party from performing any subsequent obligations strictly in accordance with the terms of this **Agreement**. No waiver shall be effective unless in writing and signed by the Party against whom enforcement is sought. Such waiver shall be limited to provisions of this **Agreement** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
- 11.4 Should any term or provision of this **Agreement** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **Agreement**, to the extent the **Agreement** shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 11.5 This **Agreement** may be amended only with the written approval of the Parties.
- 11.6 This **Agreement** states that all publicity/public awareness media will be jointly planned by the **Recipient** and the **District** and any and all materials, events, or endorsements arising out of this award will require prior **District** approval.

11.7 This **Agreement** states the entire understanding and **Agreement** between the Parties and supersedes any and all written or oral representations, statements, negotiations or **Agreements** previously existing between the Parties with respect to the subject matter of this **Agreement**. The **Recipient** recognizes that any representations, statements or negotiations made by **District** staff do not suffice to legally bind the **District** in a contractual relationship unless they have been reduced to writing and signed by an authorized **District** representative. This **Agreement** shall insure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

11.8 This **Agreement** is subject to and governed by the provisions applicable to it contained in sections 373.0831 and 373.1961, Florida Statutes (2004), as amended by Chapter No. 2005-291 (SB 444, Laws of Florida).

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this **Agreement** on the date written below.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT,
BY ITS GOVERNING BOARD**

By: _____
Carrie Hill, Interim Procurement Director

Date: _____
(Project shall start upon execution date of this Agreement.)

SFWMD Procurement Approved:

By: _____ Date: _____

SFWMD Office of Counsel Approved:

By: _____ Date: _____

Recipient's Legal Name: _____

By Authorized Official: _____

Title: _____

Date: _____

EXHIBIT “B”
SCHEDULE OF DELIVERABLES

Total payment by the **District** to _____ shall not exceed the amount of \$ _____. Payment shall be made following receipt and acceptance by the **District** of project deliverables in accordance with the schedule set forth below. The **Recipient** hereby agrees to provide the **District** all deliverables, data and information described in the Statement of Work.

Invoices for completed deliverables shall be submitted to the **District** for payment by April 1, 2007 and/or August 1, 2007. However, the **Recipient** is encouraged to arrange for deliverable inspection and invoice as soon as a deliverable has been completed.

Reporting requirements are also part of this exhibit. The **Recipient** shall provide regular project update/status reports by December 1, 2006; February 1, 2007; April 1, 2007 and June 1, 2007. Reports will provide detail on progress of the project and outline any potential issues affecting project completion or overall schedule. Status reports may be submitted in any form agreed to by the **District** project manager and the **Recipient**, and could include emails, memos, and letters.

Task No.	Deliverable(s)	Invoice Date	Report Due Date	District Not-To-Exceed Payment
1	Status Report	N/A	December 1, 2006	N/A
2	Status Report	N/A	February 1, 2007	N/A
3		April 1, 2007	N/A	
4	Status Report	N/A	April 1, 2007	N/A
5	Status Report	N/A	June 1, 2007	N/A
6		August 1, 2007	N/A	
7	Final Report	N/A	September 30, 2007	N/A
Totals				

EXHIBIT "C"
REPORTING FORM

Project Summary Final Report – FY 2007

Project Name

Project Manager

SFWMD Contract Number

Project Owner

Describe Project constructed: _____

Type of Alternative Water Supply	Quantity of Water Made Available (MGD) Upon Completion of This Phase		Construction Duration	
	Proposed	Actual	Start	Finish

Cost for this Phase		
	Proposed	Actual
Total Construction Cost – This Phase	\$	\$
Funding for this Phase		
District funding this phase	\$	\$
Local funds	\$	\$
Other funding source		
From:	\$	\$
TOTAL		

Attach map and photo(s) of project on CD, if available

To the best of my knowledge, the above information is correct

Project Manager